

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Adoption of the GTE Midwest )  
Incorporated d/b/a Verizon Midwest/VarTec Telecom, Inc. )  
d/b/a VarTec Telecom Interconnection Agreement by Excel ) **Case No. TO-2002-485**  
Telecommunications, Inc., Pursuant to Section 252(i) of the )  
Telecommunications Act of 1996. )

**ORDER DIRECTING NOTICE AND MAKING**  
**EXCEL TELECOMMUNICATIONS, INC., A PARTY**

This order provides notice of the case to interested parties and joins Excel Telecommunications, Inc., as a party to the proceeding.

On April 23, 2002, GTE Midwest Incorporated d/b/a Verizon Midwest filed a Notice of Adoption of Interconnection Agreement, notifying the Commission of Excel Telecommunications, Inc.'s desire to adopt the terms of the Interconnection Agreement between Verizon and VarTec Telecom, Inc., d/b/a VarTec Telecom, pursuant to Section 252(i) of the federal Telecommunications Act of 1996 (the Act). The Agreement between Verizon and VarTec Telecom was approved by the Commission in Case No. TO-2002-281.

Although Excel Telecommunications is a party to the agreement, it did not join in the notice. Because Excel Telecommunications is a necessary party to a full and fair adjudication of this matter, the Commission will add it as a party to this case.

The Act provides that an interconnection or resale agreement must be approved unless the state commission finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the

agreement is not consistent with the public interest, convenience, and necessity.<sup>1</sup> The Act provides further that a local exchange carrier “shall make available any interconnection, services, or network element provided under an agreement . . . to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”<sup>2</sup> This provision has been interpreted as permitting any carrier to adopt any interconnection agreement previously entered into by any local exchange carrier with any other carrier. The Federal Communications Commission has adopted 47 C.F.R. Section 51.809 (Rule 809), referred to as the “pick and choose” rule, to implement Section 252(i). Rule 809 requires an incumbent local exchange company to make available to any requesting telecommunications carrier “any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act. . . .”

The Commission finds that proper persons should be allowed 20 days from the issuance of this order to file a motion for hearing. The requirement of a hearing is met when an opportunity to be heard has been provided and no proper party has requested the opportunity to present evidence.<sup>3</sup>

Section 252(e)(4) of the Act provides that if the Commission has not approved an agreement within 90 days after submission, the agreement shall be deemed approved. Therefore, the Commission will proceed with this case expeditiously and, if there are no requests for a hearing, relief may be granted based on the verified petition. The

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<sup>1</sup> 47 U.S.C. § 252(e).

<sup>2</sup> 47 U.S.C. § 252(i).

<sup>3</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2D 494, 496 (Mo. App. 1989).

Commission finds that notice of this case should be sent to all interexchange and local exchange telecommunications companies.

**IT IS THEREFORE ORDERED:**

1. That the Commission's Data Center shall send notice to all interexchange and local exchange telecommunications companies.

2. That Excel Telecommunications, Inc., is made a party to this case.

3. That any party wishing to request a hearing shall do so by filing a pleading no later than May 21, 2002, with:

Dale Hardy Roberts, Secretary  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

and send copies to:

Thomas R. Parker  
Vice President and Associate General Counsel  
GTE Midwest Incorporated, d/b/a Verizon Midwest  
601 Monroe Street, Suite 304  
Jefferson City, Missouri 65101-3202

Chris Kelly, General Counsel  
Excel Telecommunications, Inc.  
8750 North Central Expressway, Suite 200  
Dallas, Texas 75231

and:

Office of the Public Counsel  
Post Office Box 7800  
Jefferson City, Missouri 65102

4. That the Staff of the Commission shall file a memorandum advising either approval or rejection of the proposed adoption of the Interconnection Agreement, and giving its reasons therefor, no later than May 31, 2002.

5. That this order shall become effective on May 11, 2002.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

( S E A L )

Vicky Ruth, Senior Regulatory Law  
Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 1st day of May, 2002.